THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

+Writ Petition Nos.14912 of 2006 & 1021 of 2007
(Common Judgment)

% 22.01.2007

Between:
A.Sudhakar Rao

..... Petitioner

AND

Government of A.P.
Rep.by its Secretary and others

.....Respondents

! COUNSEL FOR Petitioner: Sri V.Hari Haran

^ COUNSEL FOR RESPONDENTS: G.P. for Law & Legislative Affairs

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> Head Note:

? CITATIONS:
1) 2005 (1) ALD (Crl.) 658 (A.P.)
2) 1994 (1) ALT 722 (D.B)

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.No.14912 of 2006

Dt.22-01-2007

Between:

A.Sudhakar Rao

…Petitioner

And

Government of A.P.
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W.P.No. 1021 of 2007

Between:

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THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.Nos.14912 of 2006 & 1021 of 2007

COMMON ORDER:

These two writ petitions are filed by the same individual, and they relate to the same subject-matter. Hence, they are disposed of through a common order. For the sake of convenience, the parities are referred to, as arrayed in W.P.No.14912 of 2006.

The petitioner was appointed as Additional Public Prosecutor by the 1st respondent, for the Court of I Additional District and Sessions Judge, Ongole, for a period of three years, through G.O.Rt.No.1134, dated 24-06-2003. On expiry of the term of the petitioner, the 2nd respondent placed the 3rd respondent herein as In-charge Public Prosecutor of the said Court, through proceedings dated 15-07-2006. The petitioner filed W.P.No.14912 of 2006, challenging the same. The writ petition was admitted on 07-08-2006, and an order of interim suspension was passed on the same day.

The 1st respondent issued G.O.Rt.No.1768, dated 27-11-2006, placing the 3rd respondent as In-charge, in the place of the petitioner, after expiry of the term. The said G.O. is challenged in W.P.No.1021 of 2007.

Sri V. Hari Haran, learned counsel for the petitioner, submits

that though the term of the petitioner had expired, the 2nd respondent has no jurisdiction to post the 3rd respondent herein as Public Prosecutor in the place of the petitioner. He contends that even for such an arrangement, the 1st respondent alone is the competent authority, and that the procedure prescribed under sub-section (4) of Section 24 of the Cr.P.C., ought to have been followed. He submits that once there existed an interim order passed by this Court, suspending the operation of the proceedings, dated 15-07-2006, issued by the 2nd respondent, there was absolutely no justification for the 1st respondent to repeat the same exercise, through the G.O.Rt.No.1768, dated 27-11-2006.

Learned Government Pleader for Law and Legislative Affairs, on the other hand, submits that the petitioner does not have any right to continue as Public Prosecutor, after the expiry of his term. He contends that the necessity to follow the procedure prescribed under sub-section (4) of Section 24 Cr.P.C., would have arisen, if only the appointment of the 3rd respondent was on regular basis. He further submits that the G.O.Rt.No.1768 was issued, in view of the contention raised on behalf of the petitioner, that the 2nd respondent is not competent to place the 3rd respondent as In-charge.

The petitioner was appointed as Additional Public Prosecutor for a fixed term of three years. Section 24 of Cr.P.C. does not contemplate the continuance of the Public Prosecutor beyond the stipulated time. Instances are not lacking, where the appointing authority incorporates a clause for continuance of a Public Prosecutor, till the next incumbent is appointed. In such cases, the Public Prosecutor can continue even after the expiry of the term, but till the

regular incumbent is appointed. This aspect of the matter was dealt with by this Court in ***Pathuri Venkateswarlu v. Government of A.P***[1]***.*** Such a clause, however, does not exist in G.O.Rt.No.1134, dated 24-06-2003, under which the petitioner was appointed.

Learned counsel for the petitioner places reliance upon the judgment of this Court in ***Kasu Karthi Seetha Ramulu v. Government of A.P.***[2], in support of his contention, that even for placing the 3rd respondent as In-charge, respondents 1 and 2 ought to have followed the procedure under sub-section (4) of Section 24. Had it been a case where the 3rd respondent was appointed afresh, or his term was extended, or renewed, it would have become necessary for the 1st respondent, to follow the said procedure. As observed earlier, the 3rd respondent was only placed as In-charge, since the post became vacant, with the expiry of the term of the petitioner. Therefore, no exception can be taken to the proceedings dated 15-07-2006, challenged in W.P.No.14912 of 2006. Further, the contention, that the 2nd respondent is not competent to issue the same; is equally untenable. The reason is that through the said proceedings the 2nd respondent did not appoint the 3rd respondent as Public Prosecutor, either on regular or temporary basis. It is only an In-charge arrangement. Therefore, the W.P.No.14912 of 2006 is dismissed.

It is true that by issuing G.R.Rt.No.1768, dated 27-11-2006, the 1st respondent repeated the same exercise, as was undertaken by the 2nd respondent, by issuing proceedings dated 15-07-2006. The respondents 1 and 2 ought to have approached this Court seeking modification of the interim order. However, no serious irregularity or illegality can be said to have taken place. The G.O.Rt.No.1768 was

issued, obviously, with a view to overcome the objection raised by the petitioner, about the competence of the 2nd respondent to order In-charge arrangements. Hence, W.P.No.1021 of 2007 is also dismissed.

It is stated that the steps for appointment of Additional Public Prosecutor for the Court of I Additional District & Sessions Judge, Ongole, have already been initiated. The 3rd respondent is said to be acting as In-charge for five Courts. It would certainly give rise to pressure upon him, and he can not render effective assistance. Respondents 1 and 2 shall expedite the process of appointment of a regular Public Prosecutor for the Court of I Additional District and Sessions Judge, Ongole.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.22-01-2007.

Note:
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[1] 2005 (1) ALD (Crl.) 658 (A.P.)

[2] 1994 (1) ALT 722 (D.B.)